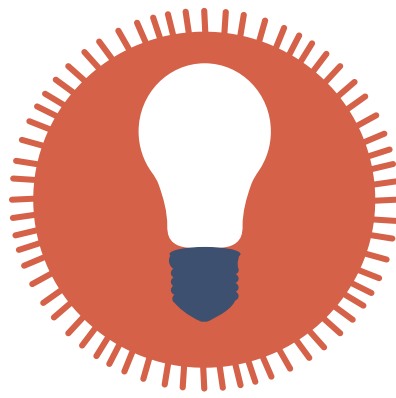


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LABOR AND EMPLOYMENT NEWS

February 2014

Donning and Doffing - An Employer Victory

The United States Supreme Court just came down on the side of management and held that the time workers spent donning and doffing certain protective gear did not have to be paid under the Fair Labor Standards Act (FLSA). Some past and present employees sued United States Steel Corp. ("US Steel") seeking back pay for the time they spent before and after work putting on and taking off, or donning and doffing, protective gear required to do their jobs. US Steel argued that donning and doffing the protective gear fell under the exclusion contained in the Fair Labor Standards Act stating that changing clothes can be bargained for as noncompensable time.

The Court had to decide how to interpret the term "changing clothes" to determine if the time the US Steel workers put on and took off their protective gear fell under the exclusion and was noncompensable. It looked at that section of the law which "allows parties to decide, as part of a collective-bargaining agreement, that 'time spent in changing clothes . . . at the beginning or end of each workday' is noncompensable." That provision "provides that the compensability of time spent changing clothes or washing is a subject appropriately committed to collective bargaining."

The Supreme Court held that "clothes" are "items that are both designed and used to cover the body and are commonly regarded as articles of dress." The particular protective gear items that the workers argued were not clothing were: a flame retardant jacket, pair of pants, and hood; a hardhat; a snood; wristlets; work gloves; leggings; metatarsal boots; safety glasses; earplugs; and a respirator. Based on the definition of "clothes" the Supreme Court used, it found no reason to exclude protective gear, generally, from that definition. The Court stated that this definition of clothes "leaves room for distinguishing between clothes and wearable items that are not clothes, such as some equipment and devices." Some wearable items will not be captured by this exclusion.

The Supreme Court then defined the term "changing" as "altering dress" rather than as substituting clothing. Substitution means exchanging clothing while altering includes placing clothing over other clothing.

Ultimately the Court held that since most of the time the workers spent involved changing clothes, and that putting on safety gear only took a few seconds, the entire period qualified for the exclusion from compensation.

Action Steps: Employers must look at the total time an employee is putting on or taking off wearable items for work. If the majority of time is spent putting on non-clothes items, then it is compensable time. If the majority of the time is spent putting on clothing, as defined in this case, then it qualifies as non-compensable time.

Please contact Hugh Murray at hmurray@murthalaw.com, 860.240.6077 or Michael Harrington at mharrington@murthalaw.com, 860.240.6049 to get more information.

If you have any questions about the issues addressed here, or any other matters involving Labor and Employment issues, please feel free to contact:

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